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EXAMINER	
YU, JUSTINE ROMANG	
ART UNIT	**PAPER NUMBER**
3764	

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/801,353	Applicant(s) SCHWARTZ ET AL.	
	Examiner Justine R Yu	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14 and 16-51* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14 and 16-51* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s) _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

1. This office action is responsive to the amendment filed on 10/4/02. As directed by the amendment, claims 1, 5, and 27-39 were amended, claim 15 was canceled, and claims 49-51 were added. Thus, claims 1-14 and 16-51 are presently pending in this application.

2. The drawings are objected to because in figure 1, the control panel 25 looks like a hole. In figure 4, "35" is directed to an "off" button rather than an "on/off" button. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. Claim 51 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear what structure is being suggested by the term "adjusting the on/off status". It appears that the recitation contradicting the suppose meaning of the on/off switch. Shouldn't be --adjusting the intensity of vibration -- or something elase?

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1- 4, 10-12, 14, 16-20, 25, 27-32, 37, 39, 40, 45, and 47-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jain (5,713,832) in view of Moceri (3,879,086).

Jain teaches a massaging cushion 10 having a plurality of cushion structures 12 (padded interior), massaging motors 14, a heater (column 5, lines 62-64), and a controller 16 controlling the speed and sequence of operation of the vibrators (column 5, lines 41-45). Jain lacks a light source. However, Moceri teaches a lamp including an arm and a light source 66 being detachably mounted on a back of a chair. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Jain's cushion with a lamp as taught by Moceri, order to provide illumination to a user.

Regarding claim 2, figure 22 of Moceri shows a flexible arm 186.

Regarding claim 3, elements 58, 19, and 62 of Moceri (figures 6, 18, and 22) are drafted broadly and read on the structure of the handle.

Regarding claim 17, Jain does not explicitly disclose that the massage motors comprise percussive vibrator or roller massage motors. The feature of choosing different types massaging motors is considered as an obvious design choice since such massaging motors are well known in the art.

Regarding claim 18, notes the removable lamp support housing (30, 32) in Moceri reference.

Regarding claim 19, the feature of choosing a battery power supply rather than AC power supply is considered as an obvious design choice, since the battery power supply is well known in the art.

Regarding claim 20, the feature of having angularly removable back portion relative to the armrest is well known in the reclinable chair.

Regarding claim 25, notes the heat source 130 in Jain reference.

Regarding claim 30, figures 2 and 10 of Jain show that the massaging motors comprise pulsating transducers.

Regarding claims 47 and 48, the feature of choosing a handheldable control panel (or a remote controller) is considered as an obvious design choice since the remote controller is well known in the massage art.

6. Claims 5, 7, 34, 36 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jain in view of Moceri as applied in claims 1 or 4 above, and further in view of Kanda (5,316,369).

The modified Jain reference does not explicitly disclose that the armrest comprises a control panel for altering the on/off status of the light source. However, Kanda teaches an armrest having a control panel with switches for controlling a reading light (column 3, lines 30-37). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the modified Jain's arm rest with a control panel as taught by Kanda, in order to provide convenience to the user. Notes that the feature of having the electrical communication enclosed with in the interior of the cushion for connecting the light source to the control panel is considered as an obvious design choice, since it is necessary and inherent upon various cushion appearances.

Regarding claim 51, Kanda has the on/off device for altering the status of the light source on the arm rather than on a remote controller. Shifting the location of the device such that having the on/off device located in the controller is considered as an obvious design choice within the knowledge of one skill in the art, since it appears that the modified Jain's system would perform equally well with the on/off switch located in the remote controller.

7. Claims 6 and 35 are rejected under 35 U.S C. 103(a) as being unpatentable over Jain in view of Moceri and Kanda as applied in claim 5 above, and further in view of Stottmann (5,453,586).

The modified Jain's control panel lacks a flexible membrane However, Stottmann teaches a flexible membrane 40 for covering a control panel. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the modified Jain's control panel with a flexible cover as taught by Stottmann, so as to enhance the cleanability.

8. Claims 8 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jain in view of Moceri as applied in claim 4 above, and further in view of Stimpson (6,388,345)

The modified Jain reference does not explicitly disclose an actuator for adjusting the intensity of the light source. However, Stimpson in column 2, lines 13-17 teaches that it is known that an actuator for adjusting the intensity of the light source. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the modified Jain's cushion with an actuator as taught by Stimpson, in order to control the intensity

of the light. Notes that the feature of having the actuator located on the armrest is well known in the art.

9. Claims 9 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jain in view of Moceri as applied in claim 4 above, and further in view of Tomlinson (5,895,365).

The modified Jain reference lacks a cup holder. However, Tomlinson teaches a cup holder 26 located in the armrest. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the Jain's arm rest with a cup holder as taught by Tomlinson, in order to provide convenience to the user.

10. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jain in view of Moceri as applied in claim 10 above, and further in view of Liang (5,429,585).

The modified Jain's cushion has motors located within the cushion rather than having motors located within a detachable pillow. However, Liang teaches a massaging pillow being detachably attached to a chair for providing massaging function. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Jain's chair with massaging pillow attached to the chair as taught by Liang, since it is a matter of design for art recognized equivalent.

11. Claim 21-23 and 41-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jain in view of Moceri as applied in claim 1 above, and further in view of Gera (5,335,962).

Jain's cushion lacks a telephone. However, Gera teaches a chair having a telephone which including a base station and a handset (speaker). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Jain's chair with a telephone as taught by Gera, so as to provide convenience to the user.

12. Claims 24 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jain in view of Moceri as applied in claim 1 above, and further in view of Foster, Jr et al(5,020,517).

The modified Jain's cushion lacks a bladder. However, Foster teaches a massaging cushion including a bladder 22. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Jain's cushion with a bladder as taught by Foster, in order to enhance the massage effect.

13. Claims 26 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jain in view of Moceri as applied in claim 1 above, and further in view of Guenther (5,613,222).

The modified Jain's reference lacks a transmitter attached to the arm. However, Guenther teaches a transmitter 23 for picking up sounds made by a person for transmitting such sounds to the transmitter of the telephone. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Jain's chair with a transmitter as taught by Guenther, in order to pick up sounds made by the person who sits on the cushion. Notes that the feature of having the transmitter attaching to the a particular location, i.e., the arm is considered as an obvious design choice within the knowledge of one skill in the

art, since it appears that the modified Jain's cushion would perform equally well with the transmitter attached to the arm.

Response to Arguments

14. Applicant's arguments filed 10/4/02 have been fully considered but they are not persuasive.

According to applicant's argument on page 9 of the remark, it is assumed that the percussive and rolling massaging motors means the percussive and rolling massaging vibrators that include motors. The rejections under 35 USC 112 first and second paragraphs are therefore withdrawn.

The applicant argues in his remarks that Jain fails to teach a cushion with a light. While it is true that Jain does not have a light, that is why the examiner rejected the claim 1 under 35 USC 103 (a). Applicant cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that Moceri is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Jain teaches a chair without a light source, Moceri teaches a chair having a light source for providing light to the user. A skilled

artisan could have readily appreciated that Jain's chair could be included with a light source in view of Moceri's teaching.

The applicant on page 10, the first paragraph of the remarks argues that "applicant's claimed invention combines a light and a massager integrated within a cushion." The term "within" is irrelevant because the claim languages do not support it. In addition, the applicant further argues that Jain is designed for inside use, where lighting typically is well provided The argument is not well taken because a light source being attached to a chair is well known in the art. Whether using the light source attached to the chair or depends on the light source provided in the room is an obvious design consideration upon the user. Therefore, the combination of Jain and Moceri reference is still proper and the rejection stands.

On page 12, the first full paragraph of the remarks, applicant argues that Stimpson, being a wall switch, clearly would not be used with a massaging motor. The examiner disagrees because there has no basis to support the allegation that Stimpson's actuator which being able to control the intensity of the light, cannot be used to control a light source in a massaging chair.

The applicant further argues that Guenther's transmitter 23 does not attach to the arm. While it is true that Guenther's transmitter is not located on the arm, however, Guenther's reference is relied only upon its teaching of a transmitter of a phone. The examiner is of the opinion that the physical positioning of a transmitter is simply a matter of device design.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justine R Yu whose telephone number is (703)308-2675. The examiner can normally be reached on 8:30am - 6:00Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (703)308-2698. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3590 for regular communications and (703)305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

Justine R Yu
Primary Examiner
Art Unit 3764

JY
November 21, 2002